

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

KENNETH HOWARD, #1274757

§

VS.

§

CIVIL ACTION NO. 6:08cv57

CLYDE D. BAIRFIELD, ET AL.

§

MEMORANDUM OPINION AND  
ORDER OF DISMISSAL

Plaintiff Kenneth Howard, previously a prisoner confined at the Coffield Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to the undersigned by consent of the parties pursuant to 28 U.S.C. § 636(c).

On December 8, 2008, the Plaintiff notified the Court that he had been released from prison, and he provided the Court with his new address. On January 14, 2009, he was ordered to respond to the Defendants' motion for summary judgment. The letter containing the order was mailed to the Plaintiff at his last known address. On February 17, 2009, the letter containing the order was returned to the Court with the following notation: "return to sender, unclaimed, unable to forward." The Plaintiff's whereabouts are unknown.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Engineering Co.*, 589 F.2d 243 (5th Cir. 1979); *Lopez v. Aransas County Independent School District*, 570 F.2d 541 (5th Cir. 1978). Not only may a district court dismiss for

want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir. 1980). It is accordingly

**ORDERED** that the complaint is **DISMISSED** without prejudice. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas. All motions not previously ruled on are **DENIED**.

**So ORDERED and SIGNED this 18th day of February, 2009.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE